

TABLE OF CONTENTS

REGULATION 78	2
Definitions	4
General Filing Requirements	7
SUMMARY OF REGULATION 78	16
SIGNIFICANT STATUTORY REFERENCES	23
INDEX OF SELECTED ADVISORY LETTERS	24
INDEX OF SELECTED BULLETINS	24
INDEX OF SELECTED LIRC BULLETINS	24
INDEX OF SELECTED REGULATIONS	24
INDEX OF SELECTED DIRECTIVES	25
NOTICE OF TERRORISM RISK INSURANCE ACT OF 2002	27
POLICY HOLDER DISCLOSURE NOTICES	29
ADVISORY LETTER NUMBER 01-02	32

July 2004

The Policy Forms division reviews property and casualty contract forms submitted by insurers for compliance with applicable statutes, rules and regulations. Additionally, the division provides information, advice and assistance to consumers and industry representatives by responding to inquiries, making public presentations and supplying informational pamphlets and brochures.

The following instructions apply to filings made by an insurer, a group of affiliated insurers, an underwriting organization, or a rating organization.

- Insurers must carefully examine the provisions of Title 22, Regulation 78, Title 23 and all other Bulletins, Regulations and Advisories developed by the Department to ensure compliance, prior to submission.
- A Department filing number will be assigned to each filing upon receipt in the Office of Property and Casualty.
- Filings should be made under separate cover for rate/rules, forms, and adoptions.
- Rates and rules may be filed in a single filing. If rate, rule and form filings are made at the same or similar times and are interdependent, this fact must be noted in the transmittal document for each related filing to facilitate cross-referencing. As different divisions within the Office of Property and Casualty handle the filings, this cross-reference will allow for a quicker review and approval process.
- Filings should be made separately by line of insurance and/or by program. A filing may reference more than one company only if all the forms contained apply to all companies listed.
- All form filings are to be addressed to:

Deputy Commissioner – Office of Property and Casualty
Attention: Forms and Compliance Division
Louisiana Department of Insurance
1702 North Street
Post Office Box 94214
Baton Rouge, LA 70804-9214

Note: If the filer is responding to a specific examiner of the Division, the response should be addressed to that person.

- All form filings must arrive by U.S. Mail, unless filed electronically through SERFF (System for Electronic Rates & Forms Filing).

REGULATION 78 - POLICY FORM FILINGS / POLICY FORM MATRIX

Adopted effective January 1, 2003, Regulation 78 provides for the uniform and practicable administration of policy forms. The provisions of this new law will assist all insurers in complying with the form filing, review and approval requirements of the Louisiana Insurance Code, and allows for expedited review and approval processes.

In addition, the Department of Insurance has created a Policy Form Matrix (PFM) (www.lds.state.la.us/ldipolicymatrix) to provide insurers the ability to search for the filing and legal requirements applicable to specific product types. The PFM will also generate the Statements of Compliance required by Regulation 78 to be submitted with most filings.

Regulation 78 is printed on the following pages. Sections §10107 and §10109 are not included as they are specific to the Health and Life Divisions. If you need to view the complete document, please refer to the Department's website at www.lds.state.la.us.

RULE

**Department of Insurance
Office of the Commissioner**

**Regulation 78 – Policy Form Filing Requirements
(LAC 37:XIII.Chapters 59 and 101)**

Under the authority of Louisiana Revised Statutes Title 22, R.S. 49:950 et seq. and R.S. 22:620.A, the Department of Insurance has adopted the following Rule to establish reasonable requirements for insurers who seek to file insurance products in this state for approval. This Rule is necessary to provide for the uniform and practicable administration of the form filing, review and approval requirements of the Louisiana Insurance Code and to assist all insurers doing business in the state of Louisiana in *Louisiana Register Vol. 28, No. 12 December 20, 2002* 2539 complying with the form filing, review and approval requirements of the Louisiana Insurance Code.

Existing Chapter 59, Regulation 15 – Rules, Rates, and Forms (By Lines) of the Department of Insurance is repealed in its entirety as of the effective date of this proposed regulation.

**Title 37
INSURANCE
Part XIII. Regulations
Chapter 59. Regulation 15 – Rules, Rates, and Forms
(By Lines)**

§5901. Filing Requirements
Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, October 1, 1958, repealed LR 28:2539 (December 2002)

Chapter 101. Regulation 78 – Policy Form Filing Requirements

§10101. Purpose

- A. The purpose of this regulation is:
1. to provide for the uniform and practicable administration of the form filing, review and approval requirements of the Louisiana Insurance Code;
 2. to clarify the disparate provisions of R.S. 22:620.B;

3. to further protect the interests of insurance consumers and the public through improvements to the form filing, review and approval processes; and
4. to assist all insurers doing business in the state of Louisiana in complying with the form filing, review and approval requirements of the Louisiana Insurance Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and *Directive 169*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002).

§10103. Authority

- A. This regulation is adopted pursuant to R.S. 22:3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and *Directive 169*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002).

§10105. Applicability and Scope; Severability

- A. This regulation applies to all insurers doing business in the state of Louisiana subject to the form filing, review and approval provisions of the Louisiana Insurance Code.
- B. If any provision of this regulation, or its application to any person or circumstance, is held invalid, such determination shall not affect other provisions or applications of this regulation which can be given effect without the invalid provision or application, and to that end, the provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and *Directive 169*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2539 (December 2002).

§10113. Filing and Review of Property and Casualty Insurance Policy Forms and Related Matters

- A. Definitions.** As used in this Section, the following terms shall have the meaning or definition as indicated herein.

Affirmative Approval – department approval, as a result of the department taking action, following *Compliance Review* of a complete filing, or a filing pursuant to Subsection D hereof.

Basic Insurance Policy Form – an insurance contractual agreement delineating the

terms, provisions and conditions of a particular insurance product. It includes endorsements, and application forms where written application is required and is to be attached to the policy or be a part of the contract. It does not include policies, riders, or endorsements designed, at the request of the individual policyholder, contract holder, or certificate holder, to delineate insurance coverage upon a particular subject or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policy.

Certification of Compliance – certification by an *insurer*, executed by an officer or authorized representative of the *insurer* on a form prescribed by the department, that upon knowledge and belief a filing is complete and in compliance with all applicable statutes, and rules and regulations promulgated by the department. A *Certification of Compliance* must be included with any filing for *certified approval*.

Certified Approval – expedited approval by the department of a complete filing based upon the inclusion of a *Statement of Compliance* and a *Certification of Compliance*, executed by an officer or authorized representative of the filing *insurer* on forms prescribed by the department. The department shall by *Directive* determine those specific types of coverage and particular types of contracts for which the Certified Approval procedure is either required or available at the option of the *insurer*.

Complete Filing – the filing of a single insurance product, including any required filing fees, a basic insurance policy form, application form to be attached to the policy or be a part of the contract, all items required under Subsection C hereof, "General Filing Requirements," and any other requirements as may be set forth in the applicable *Statement of Compliance*.

Compliance Audit – a retrospective review conducted by the department of previously approved basic insurance policy forms to determine compliance with applicable law.

Compliance Review – department review of a filing made pursuant to this Section to determine either that the filing is in compliance with all applicable statutes, rules and regulations, or that the filing should be disapproved for noncompliance.

Deemed Approval – approval of a complete filing based upon notice, as provided herein, made to the department by the filing *insurer*, following expiration of the specific time periods as provided herein, where Affirmative approval has not been granted and the filing has not been disapproved by the department.

Department – the Louisiana Department of Insurance, and includes the

commissioner of insurance.

Endorsement – a written agreement attached to an insurance product to add or subtract coverage, or otherwise modify the product.

Filing Organization – an entity authorized by the Louisiana Insurance Rating Commission to act as an advisory or rating organization on behalf of its members and subscribers.

Insurance Product – a basic insurance policy form delineating the terms, provisions and conditions of a specific type of coverage under a particular type of contract, or a basic insurance policy form which combines more than one line of business within one policy form at a single premium.

Insurer – every person engaged in the business of making contracts of insurance, as further defined in R.S. 22:5.

Method of Marketing – marketing either through independent or captive agents; telephone, email or direct mail solicitation; groups, organizations, associations or trusts; and/or the Internet.

Rate/Rule Approval – a department notice addressed to an *insurer* granting authorization to implement or revise rates and/or rules on a specified date.

Required Filing Fee – the fee assessed per product or filing pursuant to state insurance law.

Rider – an endorsement to an insurance product that modifies clauses and provisions of the product, including adding or excluding coverage.

Statement of Compliance – a form prescribed by the department detailing the requirements specific to a particular form of coverage and contract type.

B. Filing Required

1. Pursuant to R.S. 22:620.A, no basic insurance policy form, other than surety bond forms, or application form where written application is required and is to be attached to the policy or be a part of the contract, or printed rider or endorsement form, may be issued or delivered in this state unless and until it has been filed with and approved by the commissioner of insurance. Every page of each such form, including rider and endorsement forms, filed with the department must be identified by a form number in the lower left corner of the page.
2. A Property and Casualty Transmittal Document must accompany every

filing, describing the items included in the filing, the insurance product for which the filing is being made, and the method of marketing to be used for the product.

C. General Filing Requirements

1. The department shall designate, by directive, those insurance products which must be filed pursuant to the requirements for *certified approval* as set forth in Subsection F hereof, "Time Periods and Requirements for Certified Approval of Policy Form Filings," and those insurance products which may, at the discretion of the *insurer*, be filed pursuant to said requirements. All insurance products not so designated shall be filed pursuant to the requirements for Compliance Review as set forth in Subsection E hereof, "Time Periods and Requirements for Compliance Review of Policy Form Filings." Filing organizations are excepted from the mandatory provisions relative to Certified Approval and may, at their option, make filings pursuant to Subsection E hereof.
2. Only complete filings will be accepted, whether by mail or as otherwise authorized. In order for the department to conduct a proper compliance review or compliance audit of an insurance product, all items associated therewith must be included. A filing of a basic insurance policy form will be determined incomplete and will be disapproved if it does not contain all applicable items.
 - a. All filings of an insurance product must include, in final wording, the following items, in order:
 - i. required filing fee, per product, per insurance company; or required filing fee per endorsement filing; per insurance company;
 - ii. forms filed for approval;
 - iii. completed Property and Casualty Transmittal Document, as prescribed by the department;
 - iv. *Statement of Compliance* for said product;
 - v. duplicate set of the policy forms filing, as filed for approval;
 - vi. explanation of any rate/rule impact, with a copy of any rate/rule approval letters issued by the department; if none, so state;
 - vii. stamped, self-addressed envelope of sufficient size for use in returning the company's set of the policy forms filed, unless filed electronically.
3. An *insurer* may elect to adopt forms submitted by a filing organization, or have a filing organization file forms on its behalf. An *insurer* may request an effective date later than the effective date of the filing by the filing organization. Such adoptions, whether delayed or not, must be requested by letter. The Forms and Compliance Division staff of the department will verify that the *insurer* is a member or subscriber of the filing organization, and that

the forms being adopted have been approved by the department.

- a. Adoptions, including delayed adoptions, are filed for informational purposes only, but the request will be denied if the forms proposed for adoption are not approved by the department. To receive an acknowledgement of filing, the *insurer's* request must contain the following items, in order:
 - i. required filing fee, per adoption, per insurance company whether or not delayed;
 - ii. reference to the filing organization's identification/code number;
 - iii. line of business;
 - iv. name of the program; and
 - v. stamped, self-addressed envelope of sufficient size for use in returning the *insurer's* cover letter bearing the department's stamp of acknowledgement, or disapproval of an adoption.
- b. An *insurer* may elect to non-adopt forms submitted by a filing organization. Non-adoptions are filed for informational purposes only, and must be submitted by the *insurer*. To receive an acknowledgement of the informational letter, it must contain the following items, in order:
 - i. reference to the filing organization's identification/code number;
 - ii. line of business;
 - iii. name of the program; and
 - iv. stamped, self-addressed envelope of sufficient size for use in returning the *insurer's* cover letter bearing the department's stamp of acknowledgement.

D. Exceptions. Exceptions to the requirements for a complete filing may be allowed, at the discretion of the department, subject to the conditions stated herein, for the following policy forms:

1. informational filings, submitted for acknowledgement, for surety bond forms as exempted by R.S. 22:620 A(1);
2. filings for certain commercial lines, exempted pursuant to the commercial deregulation laws set by Regulation 72;
3. application forms to be used with a particular insurance product, or with multiple insurance products, provided that the policy form filings and dates approved are identified for each previously approved product with which the application form will henceforth be used, and the application form is included with any subsequently filed basic insurance policy forms as needed to constitute a complete filing. No filing fees will be required for these filings;
4. forms for lines of insurance or insurance products specifically exempted pursuant to statute.

E. Time Periods and Requirements for Compliance Review of Policy Form

Filings

1. The time periods stated in this Section do not begin until the date a complete filing, or a filing pursuant to Subsection D hereof, "Exceptions," is received by the department.
2. If a filing made is incomplete, notice of disapproval in accordance with R.S. 22:621(6) will be issued for failure to comply with the requirements of this Regulation.
3. A basic insurance policy form must be submitted to the department in accordance with the General Filing Requirements of this Section no less than 45 days in advance of planned issuance, delivery or use.
4. If affirmatively approved by order of the commissioner prior to expiration of the 45-day period allowed for department review of a filing, the policy forms filed may be used on or after the date approved.
5. If disapproved, the policy forms filed may not be used.
6. At the expiration of 45 days, if no order has been issued affirmatively approving or disapproving a filing, the *insurer* may submit written notice to the department that the filing has been deemed approved on a specific date, or advise when the filing is withdrawn from consideration. Deemed approval shall not be effective until the *insurer* has so notified the department, by either ordinary mail, facsimile transmission or electronic mail.
7. The commissioner of insurance may send written notice prior to expiration of the initial 45-day period extending the time allowed for approval or disapproval by an additional 15 days.
 - a. If affirmatively approved by order of the commissioner prior to expiration of the 15-day extended period allowed for department review, the policy forms filed may be used on or after the date approved.
 - b. At the expiration of the 15-day extended period, if no order has been issued affirmatively approving or disapproving the policy form filing, the *insurer* may submit written notice to the department that the policy forms filing has been deemed approved on a specific date or, advise when the policy forms filing is withdrawn from consideration. Deemed approval shall not be effective until the *insurer* has so notified the department, by either ordinary mail, facsimile transmission or electronic mail.

F. Time Periods and Requirements for Certified Approval of Policy Form Filings

1. The department will make available *Statements of Compliance* setting forth the statutory and regulatory requirements specific to the various forms of coverage and contract types, as well as *Certification of Compliance* forms.
2. A policy form filing submitted for *certified approval* must include the following documents.
 - a. *Statement of Compliance* applicable to the form of coverage and contract type being submitted.
 - b. Signed and dated

Certification of Compliance. c. All other items as set forth in Paragraph C.2 hereof.

3. If the filing is incomplete, notice of disapproval in accordance with R.S. 22:621(6) will be issued for failure to comply with the requirements of this Regulation.
4. At the expiration of 15 days from acknowledged receipt of a filing by the department, if no order has been issued affirming *certified approval* or disapproving the policy form filing, the *insurer* may submit written notice to the department that the policy form filing has been deemed approved on a specific date, or advise when the policy form filing is withdrawn from consideration. Deemed approval shall not be effective until the *insurer* has so notified the department, by either ordinary mail, facsimile transmission or electronic mail.
5. No *insurer*, or officer, employee or representative of an *insurer*, shall file a *Certification of Compliance* containing false attestations, or from which material facts or information have been omitted. In the event that the department subsequently learns that a *Certification of Compliance* contained any inaccuracies, false attestations, or material omissions, approval of the subject forms may be withdrawn, and the *insurer* may be subjected to the provisions of Subsection I hereof.

G. Resubmission of Filings

1. When submitting revised forms in response to an order of disapproval, or withdrawal of approval, whether issued pursuant to Subsection E, Subsection F or Subsection I hereof, the revised forms will constitute a new filing; must comply with all provisions of this Section for such a filing; and, in addition to the required filing fee, must include:
 - a. an outline of the proposed revisions, referencing the specific sections and page numbers for each form being revised;
 - b. a restatement of the form with all necessary revisions, as set forth in the prior order of disapproval, underlined in red or similarly emphasized; and
 - c. a copy of the prior order of disapproval, or withdrawal of approval, issued by the department on the previous filing.
2. When submitting revisions to previously approved forms, the revised forms will constitute a new filing; must be a complete filing as set forth in Subsection C hereof, "General Filing Requirements"; and, in addition to the required filing fee, must include:
 - a. a copy of the previously approved form;
 - b. an outline of the proposed revisions, referencing the specific sections and page numbers for each previously approved form being revised;
 - c. a restatement of the form, with all proposed revisions underlined in

- red or similarly emphasized; and
 - d. a copy of the prior order of approval, issued by the department on the previous filing.
3. For simplicity, it is advisable that a unique form number be assigned to a substantially rewritten form, and that such form be filed as an original filing.

H. Compliance and Audits

1. Approval of a basic insurance policy form does not assure perpetual compliance. Following subsequent changes in applicable law, *insurers* shall not fail to revise and file updated insurance products, or amendatory *riders* or endorsements where appropriate, with the department for approval as required to maintain continuous compliance with the current requirements of law. This provision shall apply to all new business issued, or in-force business renewed, following any such subsequent changes in applicable law, or as otherwise determined by the Louisiana Legislature.
2. A retrospective review process will be utilized to verify compliance of approved filings and to assure that all approved filings remain in compliance with currently applicable law. Compliance audits may be conducted by random selection, prompted by complaints filed with the department or requests for information made by the department, or performed during the course of examinations conducted by the department.
3. *Insurers* shall notify the department in writing to advise when a previously approved basic insurance policy form will no longer be marketed in this state and is being permanently withdrawn from the market. Such notification shall be sent 30 days prior to the market end date and shall also advise whether or not coverage issued in this state under the policy form remains in force and whether or not such existing business will continue to be renewed. The notification shall provide the policy form numbers being discontinued and dates originally approved by this department. The *insurer* may request acknowledgement of such notification.

I. Withdrawal of Approval and Corrective Action

1. The department shall withdraw any affirmative approval of a filing previously granted, or withdraw any approval of a filing previously deemed approved by an *insurer*, if the department determines that any of the reasons for disapproval as stated in R.S. 22:621 apply to the filing in question. The notice of withdrawal of approval by the department shall state that such withdrawal of approval is effective 30 days after receipt of

such notice by the affected *insurer*.

- a. The affected *insurer* may request a hearing on the withdrawal of approval, by written request mailed to the department within 30 days of receipt of the notice of withdrawal of approval.
 - b. Upon receipt by the department of a request for a hearing, the 30-day notice period precedent to withdrawal of approval being effective shall be suspended for the duration of the hearing process, and shall recommence upon the date of a ruling adverse to the *insurer* requesting the hearing. Such suspension of the notice of withdrawal of approval shall be applicable to Paragraphs I.2, 3, 4, and 5 hereof.
2. Upon receipt of the notice of withdrawal of approval by the department, the affected *insurer* must:
- a. immediately amend its procedures to assure that all in-force business is properly administered in accordance with the findings stated in the withdrawal of approval;
 - b. immediately review and ascertain any negative impact upon covered persons caused directly or indirectly by non-compliant provisions of the forms for which approval has been withdrawn; and
 - c. immediately review other products being marketed by the *insurer* to assure that they do not contain such non-compliant provisions.
3. Within 30 days of receipt of the notice of withdrawal of approval by the department, a corrective action plan must be submitted to the department by the affected *insurer*. The corrective action plan must include the following.
- a. If the affected product will no longer be marketed, amendatory endorsement forms or rider forms to affect any in-force business written utilizing the noncompliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.
 - b. If the *insurer* desires to continue marketing the affected product, both:
 - i. a complete filing of properly revised forms in accordance with Paragraph G.1 hereof; and
 - ii. amendatory endorsement forms or *rider* forms to affect any in-force business written utilizing the noncompliant forms, correcting all areas of non-compliance as stated in the withdrawal of approval by the department; and a prototype of the notice to be utilized in notifying any affected policyholders of the changes to their existing coverage.
 - c. Where such a required change can be clearly explained to prospective policyholders through amendatory endorsement forms or rider forms, an insurer may request department approval to utilize its existing inventory of the policy forms in question subject to the incorporation

of approved amendatory endorsement forms or rider forms. Such approval shall not extend to any reprinting of such forms.

4. As of 30 days following receipt of the notice of withdrawal of approval by the department, an affected product shall not be issued by the *insurer*, except in accordance with a corrective action plan approved by the department. The *insurer* has the obligation to timely notify its marketing force, or to otherwise adjust its business operations, accordingly.
 5. The department may, in its discretion, extend the 30-day period for approval of a corrective action plan, upon the written request of the affected *insurer* and for good cause shown. In the event such an extension is granted, the date by which the *insurer* must cease issuing the affected product, except in accordance with a corrective action plan approved by the department, shall likewise be so extended.
 6. Failure to timely respond as required herein shall result in a formal investigation to establish the extent of statutory violations, followed by an administrative hearing to determine appropriate sanctions against the *insurer*.
 7. Where the department fails to respond to a corrective action plan filed by an insurer, or takes no action whatsoever regarding such plan, the insurer may deem the subject corrective action plan approved at the expiration of the 30-day period for approval by the department.
- J. Appeals; Hearings.** Any *insurer* or other person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the department pursuant to this Section, may request an administrative hearing in accordance with the provisions of Part XXIX of Title 22 of the Louisiana Revised Statutes. Pursuant to R.S. 22:1351, such demand must be in writing, must specify in what respects the company is aggrieved and the grounds to be relied upon as basis for relief to be demanded at the hearing, and must be made within 30 days of receipt of actual notice or, if actual notice is not received, within 30 days of the date such *insurer* or other person learned of the act, or failure to act, upon which the demand for hearing is based.

K. Maintenance of Records; Alteration of Forms Prohibited

1. Every *insurer* or other person filing policy forms, or related forms, for approval by the department shall maintain in their files the original set of any and all forms as returned by the department, along with all related correspondence and transmittal documents from the department. Alternatively, images of such documents may be maintained in electronic/digital form. Such files shall be available for inspection by the department upon request, and must be maintained until the forms have been

withdrawn from the market in accordance with Paragraph H.4 hereof and no coverage issued on risks in this state utilizing such forms remains in force.

2. The alteration of, or any change to, any such form approved by the department is prohibited. Any such altered or changed form shall be submitted to the department as a new filing, and shall comply with all provisions of this Section applicable to a new filing. This Subsection shall not apply to typographical corrections and format improvements that do not affect the terms, provisions or clarity of the product.
3. A change of company name or logo, a change of address, and changes in listed officers do not require a new filing of forms when the department is otherwise properly notified of such change, and a copy of such notification is maintained on file by the *insurer*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and *Directive 169*.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2548 (December 2002).

§10115. Penalties

- A. Pursuant to R.S. 22:1462.1, "False or Fraudulent Material Information," in accordance with all provisions thereof, and specifically applicable to all documents required by this regulation.
 1. It shall be unlawful for any person to intentionally and knowingly supply false or fraudulent material information pertaining to any document or statement required by the Department of Insurance.
 2. Whoever violates the provisions of this Section shall be imprisoned, with or without hard labor, for not more than five years, or fined not more than \$5,000, or both.
- B. Pursuant to R.S. 22:1214(12), in accordance with all provisions thereof, any violation of a prohibitory provision of this Regulation shall constitute an unfair trade practice, and, after proper notice and hearing as specified by statute, may subject the *insurer* and its officer(s) or representative(s) to:
 1. the provisions of R.S. 22:1217, including:
 - a. payment of a monetary penalty of not more than \$1,000, for each and every act or violation, but not to exceed an aggregate penalty of \$100,000 unless the person knew or reasonably should have known he was in violation of applicable law, in which case the penalty shall be not more than \$25,000 for each and every act or violation, but not to exceed an aggregate penalty of \$250,000 in any six-month period; and,
 - b. suspension or revocation of the license of the person if he knew or reasonably should have known he was in violation of applicable law.
 2. The provisions of R.S. 22:1217.1, including:

- a. a monetary penalty of not more than \$25,000 for each and every act or violation, not to exceed an aggregate of \$250,000; and
- b. suspension or revocation of such person's license or certificate of authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and *Directive* 169.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002).

§10117. Effective Date A. This regulation shall become effective on January 1, 2003, or upon final publication in the *Louisiana Register* if after that date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and *Directive* 169.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 28:2552 (December 2002).

J. Robert Wooley
Acting Commissioner

SUMMARY OF REGULATION 78

FILING REQUIRED

Pursuant to L.R.S. 22:620.A, all Basic Insurance Policy Forms, Riders and Endorsements must be approved by the Commissioner of Insurance, prior to being issued or delivered in this state.

- A *Property and Casualty Transmittal Document* must accompany every filing, describing the items included in the filing, the Insurance Product for which the filing is being made, and the Method of Marketing to be used for the product. (§10113.B.2)
- There are 500+ defined Property and Casualty *Insurance Product Codes* for the various types of Property and Casualty Products.

STATEMENT OF COMPLIANCE

A *Statement of Compliance* form must be generated from the Policy Form Matrix (PFM), and accompany every filing, other than those listed under Exceptions in §10113.D. The “PFM” links all defined *Insurance Product Codes* to each provision of state law applicable to the content and administration of an Insurance Product.

Insurers must review the requirements for regulatory compliance in conjunction with the policy forms to be filed and identify the section / page number of the forms where compliance is demonstrated. This information must be entered on the *Statement of Compliance* for each Insurance Product included with a submission.

- The “PFM” includes all legal requirements applicable to both content and administration of an Insurance Product.
- Related laws, Rules, Regulations, Bulletins and Directives and helpful comments are

included, where appropriate.

- The “PFM” will be updated as laws change, allowing for immediate changes to affected Statements of Compliance.
- A new *Statement of Compliance* form should be printed with each policy form filing.
- The *Statement of Compliance* form includes only those legal requirements applicable to the policy form filing.

COMPLIANCE REVIEW

- A Complete filing must be submitted to the Department in accordance with the requirements in §10113.C.2, no less than 45 days in advance of planned issuance, delivery or use.
- If a filing is incomplete, notice of disapproval in accordance with L.R.S. 22:621(6) will be issued for failure to comply with the requirements in §10113.C.

CERTIFICATION OF COMPLIANCE

Effective May 1, 2003, Directive Number 174 designates those Insurance Products which must be filed pursuant to the requirements for *Certified Approval* and also those Insurance Products which may, at the discretion of the Insurer, be filed either pursuant to said requirements for *Certified Approval*, or as ordinary filings subject to the requirements for Compliance Review.

A policy form filing submitted for *Certified Approval* must include a *Statement of Compliance* applicable to the insurance product being submitted, a signed and dated *Certification of Compliance* and all other items required to constitute a Complete Filing.

No insurer, or officer, employee or representative of an Insurer, shall file a *Certification*

of Compliance containing false attestations, or from which material facts or information have been omitted. In the event that the Department subsequently learns that the *Certification of Compliance* contained any inaccuracies, false attestations, or material omissions, the approval of the subject forms may be withdrawn and the Insurer may be subjected to corrective as set forth in §10113.I.

REQUIRED FILING FEES

- Directive Number 02-168 outlines the filing fees and instructions.
- The filing fee for filing property and casualty insurance policy forms with the Department of Insurance is \$100 per Insurance Product per company.
- The filing fee for filing property and casualty insurance policy Endorsements, Amendments or Riders with the Department of Insurance is \$25 per filing per company.
- The filing fee for adopting forms filed by an advisory organization is - \$20 per product adoption per company.
- Certain **EXCEPTIONS**, as outlined in §10113.D., to the requirements for a Complete Filing do not require payment of a filing fee.

NOTE: The most common cause for an incomplete filing is payment of an incorrect filing fee. Please call (225) 342-1258 if assistance is needed in determining the proper amount.

COMPLETE FILING

Other than as specified in §10113.D, as an EXCEPTION, only Complete Filings will be accepted. In order for the Department to conduct a proper Compliance Review or Compliance Audit of an Insurance Product, all items associated therewith must be included. **A filing will be determined incomplete and will be disapproved if it does not contain all applicable items.**

All filings of an Insurance Product must include, in final printed form, the following items, in the listed order.

1. Required Filing Fee, per Insurance Product, per insurance company; or filing fee, per endorsement filing, per insurance company;
2. Completed *Property and Casualty Transmittal Document*;
3. *Statement of Compliance* for said product;
4. Policy forms filed for approval, in duplicate;
5. Explanation of any rate/rule impact, with a copy of any rate/rule approval letters issued by the department; if none, so state; and
6. Stamped, self-addressed envelope of sufficient size for use in returning the company's set of the policy forms filed, unless filed electronically.

All filings of an Adoption or a Delayed Adoption must include the following items, in the listed order.

1. Required Filing Fee, per identification/code number, per insurance company
2. Completed Property and Casualty Transmittal Document
3. Reference to the filing organization's identification/code number;
4. Line of business;
5. Name of the programs; and
6. Stamped, self-addressed envelope of sufficient size for use in returning the company's set of the policy forms filed, unless filed electronically.

All filings of a Non-Adoption must include the following items, in the listed order.

1. Completed Property and Casualty Transmittal Document
2. Reference to the filing organization's identification/code number;
3. Line of business;
4. Name of the programs; and

5. Stamped, self-addressed envelope of sufficient size for use in returning the company's set of the policy forms filed, unless filed electronically.

EXCEPTIONS

Exceptions to the requirements for a Complete Filing may be allowed, at the discretion of the Department, subject to the conditions stated herein, for the policy forms outlined in §10113.D.

RESUBMISSION OF REVISED FORMS

When submitting revised forms in response to an order of disapproval, or withdrawal of approval, the revised forms will constitute a new filing. Such resubmission must comply with all requirements §10113.G.

COMPLIANCE AND AUDITS

➤ Approval of a Basic Insurance Policy Form does not assure perpetual compliance. Following subsequent changes in applicable law, insurers shall revise and file updated Insurance Products, or amendatory Riders or Endorsements where appropriate, with the Department for approval as required to maintain continuous compliance with the current requirements of law, as outlined in §10113.H. This provision shall apply to all new business issued, or in-force business renewed, following any such subsequent changes in applicable law, or as otherwise determined by the Louisiana Legislature.

➤ A retrospective review process will be utilized to verify compliance of approved filings and to assure that all approved filings remain in compliance with currently applicable law. Compliance Audits may be conducted by random selection, prompted by complaints filed with the Department or requests for information made by the Department, or performed during the course of examinations conducted by the

Department, as outlined in §10113.H.

PERMANENT WITHDRAWAL OF APPROVED FORMS

Insurers shall notify the Department in writing to advise when a previously approved Basic Insurance Policy Form will no longer be marketed in this state and is being permanently withdrawn from the market.

APPEALS/HEARINGS

Any Insurer or other person aggrieved by a failure to approve any filing, or the disapproval of any filing, or the withdrawal of approval of any filing, or any related action taken by the Department pursuant to §10113, may request an administrative hearing in accordance with the provisions of Part XXIX of Title 22 of the Louisiana Revised Statutes. Pursuant to

L.R.S. 22:1351, such demand must be in writing, must specify in what respects the company is aggrieved and the grounds to be relied upon as basis for relief to be demanded at the hearing, and must be made within 30 days of receipt of actual notice or, if actual notice is not received, within 30 days of the date such Insurer or other person learned of the act, or failure to act, upon which the demand for hearing is based.

MAINTENANCE OF RECORDS; ALTERATION OF FORMS PROHIBITED

Every Insurer or other person filing policy forms, or related forms, for approval by the Department shall maintain in their files the original set of any and all forms as returned by the Department, along with all related correspondence and transmittal documents from the Department. Alternatively, images of such documents may be maintained in electronic/digital form.

Such files shall be available for inspection by the Department upon request, and must be maintained until the forms have been withdrawn from the market and no coverage issued on risks in this state utilizing such forms remains in force.

The alteration of, or any change to, any such form approved by the Department is prohibited. Any such altered or changed form shall be submitted to the Department as a new filing, and shall comply with all provisions in §10113 applicable to a new filing. This requirement does not apply to typographical corrections and format improvements that do not affect the terms, provisions or clarity of the Insurance Product.

A change of company name or logo, a change of address, and changes in listed officers do not require a new filing of forms when the Department is otherwise properly notified of such change, and a copy of such notification is maintained on file by the Insurer.

CONTACT INFORMATION

Contact the Office of Property and Casualty – Policy Forms Division at:

(225) 342-1258 or pc@ldi.state.la.us.

SIGNIFICANT STATUTORY REFERENCES

Chapter 1 – Insurance Code

- Part I. Title, Definitions, Classifications, and Other Regulatory Matters (R.S. 22:1 et seq.) - General definitions of insurance, defines various lines of insurance.
- Part XIV. The Insurance Contract (R.S. 22:611 et seq.) - The approval of forms, contents of policies, and general provisions for property and casualty insurance.
- Part XV. Standard Fire Policy (R.S. 22:691 et seq.) - Standard provisions of fire insurance contracts.
- Part XXV. Managing General Agents Law (R.S. 22:1201 et seq.) - Definitions.
- Part XXVI. Unfair Trade Practices (R.S. 22:1211 et seq.) - Unfair methods and unfair or deceptive acts and practices prohibited.
- Part XXVII. Unauthorized Insurance (R.S. 22:1248 et seq.) - Surplus Lines, endorsement of contract.
- Part XXX. Louisiana Insurance Rating Commission and Rate Regulation (R.S. 22:1401 et seq.) - Rate regulations.
- Part XXXI. Miscellaneous and Final Provisions (R.S. 22:1451 et seq.) - Notice of premium increase, auto-substitute vehicles, comparison data, and discrimination; complaints against insurers; homeowners-acts of God; etc.

Chapter 2 – Miscellaneous Provisions

- Part I. In General (R.S. 22:1521 et seq.) - Preferences or distinctions in group transactions prohibited.
- Part II. Fire Insurance Companies (R.S. 22:1551 et seq.) - Definitions.
- Part VII. Automobile Service Clubs (R.S. 22:1751 et seq.) - Definitions; service contract provisions.
- Part VIII. Vehicle Mechanical Breakdown Insurers (R.S. 22:1800 et seq.) - Definitions; contracts not in compliance.
- Part IX. Property Residual Value Insurers (R.S. 22:1900 et seq.) - Definitions; contracts not in compliance.
- Part XIV. Risk Retention Group Law (R.S. 22:2071 et seq.) - Definitions.
- Part XV. Collision Damage Waiver Law (R.S. 22:2091 et seq.) - Definitions; form filing requirements.
- Part XVI. Louisiana Title Insurance Act (R.S. 22:2092 et seq.) - Definitions; requirements and restrictions.

INDEX OF SELECTED ADVISORY LETTERS

Advisory Letter No. 02-01 Notice of Cancellation/Notice of Nonrenewal

Advisory Letter No. 01-02 Use of Mold Exclusions in Insurance Policy Forms

Advisory Letter No. 01-01 Addendum

Use of Pollution Exclusions in Commercial Lines Forms

Advisory Letter No. 01-01 Use of Pollution Exclusions in Commercial Lines Forms

Advisory Letter No. 99-2 Act 404 (motorcycle helmet law)

Advisory Letter No. 99-1 Repair of motor vehicles

Advisory Letter No. 98-1 Approval of insurance policy forms

Advisory Letter No. 97-1 Use of standard pollution exclusions

INDEX OF SELECTED BULLETINS

Bulletin 03-01 Terrorism Risk Act of 2002 – Disclosure Notice

Bulletin 02-03 Terrorism Risk Act of 2002 – Expedited Voluntary Filing Procedures

INDEX OF SELECTED LIRC BULLETINS

LIRC Bulletin 98-03 Issues Relative to Act 1946 – “NO PAY/ NO PLAY”

LIRC Bulletin 98-02 Act 1476 – Omnibus Premium Reduction Act of 1997

LIRC Bulletin 98-01 Act 1476 – Omnibus Premium Reduction Act of 1997

INDEX OF SELECTED REGULATIONS

Regulation 78: Policy Forms Filing Requirements

Regulation 72: Commercial Lines Insurance Policy Form Deregulation

Regulation 64: Cancellation provisions for Vehicle Mechanical Breakdown Insurers

INDEX OF SELECTED DIRECTIVES

Directive 175 Subrogation Provisions

Directive 174 Regulation 78 – Certified Products

Directive 173 Binding Arbitration and/or Appraisal Provisions

Directive 152 Statutorily imposed vicarious parental liability

Directive 149 Statutorily imposed vicarious parental liability

Directive 144 Guidelines for charges pursuant to LSA-R.S. 22:627

Directive 143 Aftermarket crash parts disclosure requirement

Directive 137 Withdrawal of absolute/total pollution exclusion

Directive 135 Use of discounts and credits by group self-insurance funds for workers' compensation

Directive 132 Reporting requirements for vehicle mechanical breakdown insurers

Directive 130 Retrospective rating plans

Directive 129 Participating policies

Directive 127 Managing general agents

Directive 124 Acceptance of premiums from a Louisiana licensed premium finance company

Directive 118 Act No. 811 of 1993-requirement for Louisiana claims office or claims adjuster

Directive 117 Third party agreements by property and casualty insurers for vehicle glass repair

Directive 112 Compliance with Title 22, part XXVII, L.S.A.

Directive 95 Acts 438 and 773 of the 1989 Louisiana Legislature

Directive 94 Act 578—House Bill 395—1989 Louisiana Regular Session

Directive 93 Out of state coverage clause notice to insurers writing automobile liability coverage

Directive 90 Fidelity and surety bonds

Directive 89 Fidelity and surety bonds

Directive 78 Risk Retention Act of 1986

Directive 75 Risk retention groups

Directive 74 Transfer of private passenger automobile physical damage coverage

Directive 72 Interpretation of language on standard fire policy

Directive 64 Surplus lines

Directive 56 Rate reduction for persons over fifty-five

Directive 35 Automobile clubs – “Accumulation” and/or “credit” for prior
membership in other automobile associations

NOTICE

**TO: ALL PROPERTY & CASUALTY INSURERS WRITING
COMMERCIAL LINES INSURANCE PRODUCTS AND
ALL INSURERS ON THE NAIC QUARTERLY LISTING
OF ALIEN INSURERS**

**FROM: J. ROBERT WOOLEY,
COMMISSIONER OF INSURANCE**

**RE: TERRORISM RISK INSURANCE ACT OF 2002
FILING PROCEDURES EFFECTIVE
JANUARY 1, 2004**

Introduction

The provisions in the Terrorism Risk Insurance Act of 2002, for expedited filing, expired on 12/31/2003. Effective January 1, 2004, rates and forms for terrorism risk insurance coverage are now subject to the current rate and form filing procedures in the State of Louisiana, and are no longer eligible as an expedited filing.

Filing Procedure

Effective January 1, 2004, all terrorism form filings must now comply with Regulation 78 § 10113.C.2, in order for your filing to be deemed a complete filing. The requirements of Regulation 78 § 10113.C.2 can be found on our website www.ldi.state.la.us.

Effective January 1, 2004, all rate/rule terrorism filings must comply with the requirements outlined in the Filing Handbook, in order for your filing to be deemed a complete filing. Further, filings requesting rates above 2% must include additional documented support.

If your form filing is determined to be an incomplete filing, based on the requirements as outlined in Regulation 78 § 10113.C.2, it will be disapproved pursuant to LRS 22:621 and Regulation 78 § 10113.C.2.

If the rate/rule filing is determined to be incomplete, based on the outlined

requirements, it will be processed according to the filing provision requested in the transmittal document.

Additional information regarding the Act may be found at www.treasury.gov/trip.

Questions regarding this notice may be directed to:

Policy forms: Kathlee Hennigan at khennigan@ldi.state.la.us or by telephone at (225) 342-0073;

Rates: Malissa Drake at mdrake@ldi.state.la.us or by telephone at (225) 342-9055.

J. ROBERT WOOLEY
COMMISSIONER OF INSURANCE

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act of 2002, effective November 26, 2002, that you now have a right to purchase insurance coverage for losses arising out of acts of terrorism, *as defined in Section 102(1) of the Act*: The term “act of terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property; or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of an air carrier or vessel or the premises of a United States mission; and to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion. Coverage under your existing policy may be affected as follows:

ANY IN-FORCE TERRORISM **EXCLUSIONS** FOR ACTS OF TERRORISM, *AS DEFINED IN THE ACT*, ALREADY CONTAINED IN YOUR POLICY OR INCLUDED IN AN ENDORSEMENT ARE **NULLIFIED** AS OF NOVEMBER 26, 2002.

YOU SHOULD KNOW THAT COVERAGE PROVIDED BY THIS POLICY FOR LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM IS PARTIALLY REIMBURSED BY THE UNITED STATES UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. UNDER THIS FORMULA, THE UNITED STATES PAYS 90% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

ALSO YOU SHOULD KNOW THAT IN THE EVENT THAT THERE IS A CERTIFIED LOSS AND PAYMENTS MADE BY THE FEDERAL GOVERNMENT UNDER THE ACT, THAT THE

AMOUNT EXPENDED CAN BE RECOUPED BY ASSESSMENT OF A PREMIUM SURCHARGE, ON AN ANNUAL BASIS, NOT TO EXCEED 3% OF THE PREMIUM.

SELECTION OR REJECTION OF TERRORISM INSURANCE COVERAGE

UNDER FEDERAL LAW, YOU HAVE THIRTY (30) DAYS TO CONSIDER THIS OFFER OF COVERAGE FOR TERRORIST ACTS AND SUBMIT THE PREMIUM REQUIRED. IF WE DO NOT RECEIVE THE QUOTED PREMIUM BY _____, THE TERRORISM EXCLUSION NULLIFIED BY THE ACT WILL BE REINSTATED ON _____, AND YOU WILL NOT BE COVERED FOR LOSSES ARISING FROM TERRORIST ACTS THAT WERE PREVIOUSLY EXCLUDED.

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

Coverage for acts of terrorism is already included in your current policy. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The portion of your annual premium that is attributable to coverage for acts of terrorism is: \$_____.

Also you should know that in the event that there is a certified loss and payments made by the federal government under the Act, that the amount expended can be recouped by assessment of a premium surcharge, on an annual basis, not to exceed 3% of the premium.

ADVISORY LETTER NUMBER 01-02

December 28, 2001

**TO: ALL PROPERTY AND CASUALTY INSURERS ADMETTEDOR APPROVED
TO ISSUE POLICIES INSURING RISKS IN LOUISIANA**

RE: Use of Mold Exclusions in Insurance Policy Forms

STATUTE AND REGULATION REFERENCES:

Title 22 of the Louisiana Revised Statutes §§2, 620-621, 1211 et seq., and 1262.1

Please be advised that after due consideration, the WI has determined that it will allow the use of insurance policies and/or endorsements that exclude coverage for mold If the exclusion is directed at precluding coverage for (1) remedial costs, such as the costs of testing the insured premises for mold, or the cost of containment or fumigation of the insured premises, whether the mold is the result of a covered cause of loss or otherwise; or (2) mold that is not the result of a covered cause of loss.

Insurers doing business in Louisiana should take note that standard homeowner's policies do not provide coverage for "seepage" or for damage arising from wear and tear or the failure to do proper maintenance. More importantly, unlike most states there is very limited punitive damages exposure in Louisiana.

Insurers should make every effort to develop exclusions that are narrowly drafted. Further, such exclusions should not be used to deny coverage for the costs of repair and restoration of the insured premises for damages arising from a covered cause & loss, even if some mold is present.

Any questions regarding this Advisory Letter may be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at khennigan@ldi.state.la.us, or by telephone at 225-342-0073 or to C. Noel Wertz, Chief Attorney, Property and Casualty Section at nwertz@ldi.state.la.us or by telephone at 225-342-4632.

J. ROBERT WOOLEY
ACTING COMMISSIOER OF INSURANCE